(3)

SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
[CHHATTISGARH]

MISCELLANEOUS APPEAL NO. 405 /2006

APPELLANTS
Defendants

1. Raki Kesh Agrawal, S/o. Late Shree Ram Agrawal, age 50 years.

2. Vijay Kumar Agrawal, S/o. Late Shree Ram Agrawal, age 48 years.

3. Bipin Kumar Agrawal, S/o. Late Shree Ram Agrawal, age 35 years.

4. Praveen Kumar Agrawal, S/o. Late Shree Ram Agrawal, age 30 years.

5. Naveen Kumar Agrawal, S/o. Late Shree Ram Agrawal, age 26 years.

All the Appellant are R/o Village Batouli Tah. Sitapur Dist- Surguja

P.R. No. 471/06 Surguja
Presented by Shri ... dated 20/2/06

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VERSUS

RESPONDENTS
Plaintiff

1. Jagdish Rai Agrawal, S/o. Ayodhya Prasad Agrawal, (since died) Through legal heir.

a) Bharpo Devi Agrawal, W/o. Jagdish Rai Agrawal, aged about 65 years. R/o. Batoli, Thana-Batoli, Tahsil-Sitapur, Distt. Surguja (C.G.).

b) Ram Niwas Agrawal, S/o. Jagdish Rai Agrawal, aged about 58 years, R/o. Model Town, In front of Electricity Board Office, Hapi, Distt. Hissar (Haryana).

c) Vishnu Agrawal, S/o. Jagdish Rai Agrawal, aged about 48 years.

d) Pawan Agrawal, Jagdish Rai Agrawal, aged about 46 years.

Respondent No. 1c) and 1d) are R/o. Batoli, Thana-Batoli, Tahsil-Sitapur, Distt. Surguja (C.G.).

e) Smt. Namrata Agrawal, W/o. Girdhari Lal Agrawal, aged about 41 years, R/o. C/o. Sharda Cables, Nearby Pratap Talkies Chowk, Bilaspur (C.G.).

Respondents
Defendants

2. Nand Kumar Gupta, S/o. Late Paras Nath Gupta, aged about 30 years.

3. Parmanand Gupta, S/o. Bhagirathi Gupta, aged 24 years.

4. Roshan Lal Gupta, S/o. Bhagirathi Gupta, aged 31 years.

5. Smt. Kamla Devi, W/o. Bhola Prasad Gupta, aged about 40 years.

6. Bhola Prasad Gupta, S/o. Kundan Sao, aged about 47 years.

7. Amarnath S/o. Banwarilal Agrawal aged about 40 years.

8. Smt. Santara Bai, W/o. Kali Ram Agrawal, aged about 45 years.

8(a) Kali Ram S/o. unknown, aged about 65 years.

8(b) Radhey Shyam, S/o. Kali Ram aged about 33 years.

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8(c) Praveen S/o. Kali Ram, aged about 35 years.

Respondent no. 2 to 8 and 8(a) to 8(c) are resident of Village Batoli, Tahasil-Sitapur, Distt. Surguja (C.G.).

8(d) Binod S/o. Kali Ram aged about 30 years.

8(e) Amit S/o. Kali Ram aged about 30 years.

Respondent No. 8(d) and 8(e) are resident of Amit Traders, New Bus Stand, Nearby Poonam Lodge, Ambikapur, Thana & Tahasil-Ambikapur, Distt.Surguja (C.G.).

8(f) Smt. Amita Agrawal, W/o. Subhas Bhaiya, R/o. Thana Road, Surajpur, Distt. Surguja (C.G.).

8(g) Smt. Kaushilya Devi, W/o. Ram Bilas Agrawal, R/o. Ashok Readymade, Surajpur, Thana & Tahasil-Surajpur, Distt. Surguja (C.G.).

9. Ram Awatar Soni, S/o. Dukhi Soni, aged about 35 years.

10. Smt. Madhuri Gupta, W/o. Devendra Gupta, aged about 28 years.

11. Rajendra Prasad Gupta, S/o. Bandhu Sao, aged about 26 years.

12. Vishnu Kumar Gupta, S/o. Ganga Prasad Gupta, aged about 28 years.

13. Prahlad Prasad Gupta, S/o. Nanka Sao, aged about 38 years.

14. Mahavir Agrawal, S/o. Late Ram Bhagat, aged about 45 years, Respondent no. 9 to 14 are resident of Village Batoli, Thana Batoli, Distt. Surguja (C.G.).

15. State of Chhattisgarh Through Collector, Surguja (C.G.).

APPEAL UNDER ORDER 43 RULE 1(a) OF THE CODE OF CIVIL PROCEDURE

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(69)

मामला क्रमांक ....M.A.No.405/.. **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	10.01.2007 Shri Sunil Tripathi, learned counsel for the appellants. Shri N.K.Agrawal, learned Senior Counsel with Shri Deepak Gupta, Advocate for the respondent No.1(a) to (e). No one appears on behalf of the respondent No.2 to 14, though served. Shri Akhil Agrawal, Panel Lawyer for the State/respondent No.15. Heard on I.A.No.1108/2006 which is an application for seeking permission to implead the legal representatives of respondent No.1 Jagdish Rai Agrawal. Learned counsel for the appellants submits that the legal representatives of the respondent No.1 are already brought on record. Not opposed. I.A.No.1108/2006 is allowed. As per report of the process server, respondent No.8 Smt. Santara Bai has also died. Learned counsel for the appellants submits that the legal representatives of the respondent No.8 are already on record and prays for deletion of name of Santara Bai from the cause title. Not opposed. Prayer is allowed. Heard. Brief facts are that one Jagdish Rai Agrawal instituted a Civil Suit No.140-A/2003 for partition of the joint family property pleading that the defendant No.1 to 6 had, by playing fraud executed a sale	

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मामला क्रमांक ..... H.A.No.405 / **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deed of a part of the joint properties mentioned in Schedule-B of the plaint to the respondents No.2 to 13. Relief of possession of his share after partition of the suit property mentioned in Schedule-A was prayed. The plaintiff valued the suit at 20 times of the land revenue payable, the suit lands in Schedule-A being agricultural lands and prayed that the properties mentioned in Schedule-B be put to the share of the defendants No.1 to 6.

The defendants filed written statement and contended inter alia that a partition had already taken place on 01-07-1976 in which the properties mentioned in Schedule-A had fallen to the share of respondent/defendant No.1 to 6. The plaintiffs were thus estopped from filing the suit for partition. It was also pleaded that the suit was also barred by limitation. It was also pleaded that the plaintiff ought to have paid ad volorem Court fees on the market value of the super structure situated on the suit lands.

The learned fifth Civil Judge Class-II, Ambikapur framed as many as 13 issues. Issue No.9 and 11 related to valuation of the suit whereas the issue No.10 & 12 related to question of estoppel and limitation. The learned fifth Civil Judge Class-II, Ambikapur heard arguments and decided issues No.9 to 12 as preliminary issues on the basis of averments made in the written statement and recorded a finding that the plaintiffs were estopped for challenging the earlier partition and also recorded a finding that the suit was barred by limitation. It also recorded a finding that the plaintiffs ought to have valued the suit under Section-7 of the Court Fees Act on the value of the sale deeds executed by the defendant No.1 to 6. On these

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मामला क्रमांक M.A.No.405/ **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

premises, the learned fifth Civil Judge Class-II, Ambikapur dismissed the suit.

Aggrieved by the order dated 19.04.2005 passed in Civil Suit No.140-A/2003, the plaintiffs preferred Civil Appeal No.18-A/2005 before the Ist Additional District Judge, Ambikapur. The learned Ist Additional District Judge, Ambikapur recorded a finding that the issue No.9 to 12 ought to have been decided after recording evidence and therefore remanded the matter to the Civil Judge Class-II, Ambikapur with a direction to decide issues No.9 to 12 after recording evidence on these issues. Being aggrieved by the said order, the defendants No.1 to 5 have preferred this Miscellaneous Appeal.

At the very outset the orders passed by the learned lower Court as also the First Appellate Court are unsustainable under law. So far as the issues No.10 & 12 are concerned, these issues arose on the basis of the averments made in the written statement that an earlier partition had taken place on 01.07.1976 and that the suit was barred by limitation. In my considered opinion, these issues could not be decided as preliminary issues since they contained mixed question of law and fact. The issue of estoppel as also as the issue of limitation could not therefore be disposed of as preliminary issues and ought to have been decided after recording evidence on all issues at the time of final disposal.

So far as the issues No.9 & 11 are concerned, these issues related to valuation of the suit. Section 7 (vi-a) reads as under:

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मामला क्रमांक ..... N.A. No. 405/ ..... सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

7. Computation of fees payable in certain suits:

(vi-a) "In suits for partition:

(a) according to one-half of the value of the plaintiff's share of the property; and

(b) according to the full value of such share if on the date of presenting the plaint the plaintiff is out of possession of the property of which he claims to be a co-parcener or co-owner, and his claim to be a co-parcener or co-owner on such date is denied.

A perusal of clause (vi-a) of Section-7 shows that in a suit for partition, without claiming separate possession, the suit has to be valued according to one-half of the value of the plaintiffs share of the property. This is indicative of the facts that Court fees payable on such a suit is less than the Court fees payable when a suit is instituted for partition and separate possession on the ground that the plaintiff is out of possession. The legislative intent is thus clear that when a plaintiff claims partition and separate possession on the ground that he is out of possession, the claim is to be valued just like a suit for possession simpliciter. When a co-owner files a suit for partition and separate possession, on the ground that he is out of possession, there is no difference between such a suit and a suit for possession based on title which shall be valued according to the full value of the share claimed by the plaintiff and not on the value of the superstructure situated on the entire suit land. Valuation of the full value of the plaintiffs share will have to be calculated under Section-7(v) of the Court Fees Act.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

A harmonious construction of paragraphs (v) and (vi) of Section-7 will show that the legislature intended that the market value of a land revenue paying land for both the clauses will be the same, that is, twenty times the land revenue as provided under clause(v). A different interpretation will create a conflict in these two clauses inasmuch as in a suit for possession simpliciter of land assessed to land revenue, the plaintiff will be required to pay twenty times the land revenue, while in a suit for partition and separate possession, when plaintiff is out of possession, he will be required to pay Court fees on the actual market value. We cannot attribute such an inconsistency to the legislative intent. So far as the superstructure standing on the land is concerned it would have to be valued on the market value under Section-7(v) as also under Section-7(vi-a) of the Court Fees Act.

Shri N.K.Agrawal, learned Sr. Counsel for the respondent No.1(a) to (e) undertook to pay ad valorem court fees only on the full value of his share i.e. on the valuation of the super structure situated thereon under Section-7(vi-a) (b) of the Court Fees Act. He undertook to amend the plaint averments regarding valuation of the suit and to pay ad valorem court fees accordingly. So far as the lands sold by the defendants' No. 1 to 6 mentioned in Schedule-B were concerned, the plaintiff had prayed that those lands be put to the share of the defendants No.1 to 6 and thus had not claimed share in or possession thereof. It was submitted by the learned counsel for the appellants during the course of arguments that on the agriculture lands mentioned in Schedule-B, super structure had been erected after the execution of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sale deed. In view of the pleadings and legal position, the plaintiff was not required to pay ad valorem court fees on the value of super structure on lands mentioned in Schedule-B of the plaint.

In the result, the impugned judgment dated 17.11.2005 passed in Civil Appeal No. 18-A/2005 as also the order dated 19.4.2005 passed by the Fifth Civil Judge, Class-II, Ambikapur in Civil Suit No. 140-A/2003 are set aside. It is directed that issues No. 10 and 12 regarding estoppel and the question of limitation shall be decided along with other issues at the time of final disposal of suit since they contain mixed question of law and fact. So far as the issues No. 9 and 11 are concerned, the respondents/plaintiffs shall amend the valuation of the suit in the plaint and pay ad valorem court fees under Section-7(vi-a)(b) of the Court Fees Act on the full value of his share of the lands mentioned in Schedule-A and superstructure thereon if any. The plaintiff is not required to pay ad valorem court fees for the relief of partition on the value of the super structure erected on the lands mentioned in Schedule-B to the plaint. There shall be no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

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